

## Message Text

CONFIDENTIAL

PAGE 01 SEOUL 08818 150426Z

60

ACTION L-03

INFO OCT-01 EA-07 ISO-00 SSO-00 NSCE-00 USIE-00 INRE-00

CIAE-00 PM-04 H-02 INR-07 NSAE-00 NSC-05 PA-01 PRS-01

SP-02 SS-15 MC-02 EB-07 NRC-05 TRSE-00 ERDA-05

COME-00 OPIC-03 AID-05 /075 W  
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O R 150333Z NOV 75

FM AMEMBASSY SEOUL

TO SECSTATE WASHDC 3889

INFO SECDEF WASHDC

C O N F I D E N T I A L SEOUL 8818

JOINT EMBASSY/JUSMAG MESSAGE

E.O. 11652: GDS

TAGS: MASS KS

SUBJECT: MUNITIONS CONTROL AND AGENTS' FEES

REF: (A) STATE 255260 DTG 282041Z OCT 75

(B) STATE 258169 DTG 310006Z OCT 75

(C) SEOUL 8660 DTG 100602Z NOV 75

1. AS REQUESTED REFTEL A, EMBASSY COMMENTS RE STEPS  
WHICH MIGHT BE TAKEN IN DEALING WITH AGENTS' FEES QUESTIONS  
FOLLOW.

2. FMS SALES: WE UNDERSTAND THAT OCTOBER 1 REVISION OF ARMED  
SERVICES PROCUREMENT REGULATION (ASPR) 6-705.3 HAS RECOGNIZED  
FACT THAT U.S. MANUFACTURERS OFTEN DO INCUR UNUSUAL EXPENSES  
WHILE COMPETING IN THE INTERNATIONAL MARKETPLACE. REVISION  
PERMITS REASONABLE COMPETITIVE COSTS, BUT DOES NOT PERMIT  
INCLUSION OF COSTS NOT NORMALLY ALLOWABLE. THIS GOES A LONG  
WAY TOWARD IMPROVED PRICING STANDARDS. WE FEEL THAT  
DOD-PROPOSED REVISIONS CITED REFTEL A, PARA 3, WOULD PLACE  
U.S. MANUFACTURER AT A DEFINITE COMPETITIVE DISADVANTAGE BY  
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PAGE 02 SEOUL 08818 150426Z

REVEALING THE NAMES OF THEIR AGENTS AND THE AMOUNTS OF AGENTS'

FEES. IF DOD HAS DETERMINED THAT A GIVEN FEE IS REASONABLE AND THUS ALLOWABLE, IT IS COUNTERPRODUCTIVE TO TAKE NOTIFICATION STEPS OUTLINED IF CUSTOMER NATION HAS NOT REQUESTED INFORMATION.

SPECIFIC FEE CITATION WOULD BE INTERPRETED HERE BY ROKG AS ADDITIVE COST, AND WOULD IMPLY THAT U.S. USES DOUBLE STANDARD IN PURCHASING ARMS FOR OTHER NATIONS. IT WOULD BE PREFERABLE FOR DOD TO REFER TO CUSTOMER NATION FOR DECISION ONLY THAT PORTION OF CLAIMED COST WHICH WOULD NOT BE ALLOWED BY U.S. UNDER NORMAL (AND PUBLICLY ANNOUNCED) CONTRACTING PRACTICES. THIS WOULD ACCOMPLISH DESIRED INTENT AND LESSEN RISK THAT IMPROPER PRACTICES MAY BE INVOLVED.

3. COMMERCIAL SALES: INDUSTRY OBJECTIONS TO PROPOSED INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR) AMENDMENTS REINFORCE FACT THAT REVEALING AGENTS' FEES TO PURCHASING NATIONS WILL ALTER LONG-STANDING RELATIONSHIPS AMONG U.S. SELLERS, FOREIGN AGENTS, AND PURCHASING GOVERNMENTS. DISCLOSURE WOULD TEND TO REDUCE OR ELIMINATE AVAILABILITY OF FUNDS TO SUPPORT COMMONLY-ACCEPTED REALITY HERE OF AGENTS' ENTERTAINMENT EXPENSES. THE PROPOSED ITAR AMENDMENT DOES NOT PROVIDE FOR INDEPENDENT DETERMINATION OF FAIRNESS/REASONABLENESS OF AGENTS' FEES, AS IS CASE UNDER FMS PROCEDURES, AND IT IS RECOMMENDED THAT STATE/COMMERCE DETERMINE APPROPRIATE GUIDELINES TO BE PUBLISHED. CERTIFICATION COULD THEN BE MADE BY EXPORTING FIRM AT TIME OF LICENSE APPLICATION THAT AGENT'S FEE IS WITHIN PUBLISHED GUIDELINES. AGENT FEES (WHICH WOULD BE ALLOWABLE UNDER FMS PROCEDURES) WOULD NOT BE AUTOMATICALLY REVEALED TO PURCHASING COUNTRY. REVELATION OF FEES WOULD ONLY BE MADE IN CASES WHERE FEES ARE JUDGED EXCESSIVE UNDER ESTABLISHED GUIDELINES OR WHERE CUSTOMER NATION HAS REQUESTED SUCH INFORMATION.

4. WE BELIEVE PROPOSED NEW PROCEDURES, AS DETAILED BY REFTTEL A, WOULD SERIOUSLY IMPEDE ABILITY OF U.S. FIRMS TO COMPETE AGAINST THIRD COUNTRY SALES IN ROK. KEY TWO-PARTY RELATIONSHIP HERE IN SUPPLIER-AGENT-PURCHASING NATION TRIANGLE IS THAT OF LOCAL AGENT AND GOVERNMENT, NOT EXPORTING FIRM AND GOVERNMENT. IN ROK, SUCCESS IN COMPETITION AMONG SUPPLIERS FROM SEVERAL NATIONS VERY OFTEN OWES MORE TO AGENT'S RELATIONSHIP WITH CONFIDENTIAL

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PAGE 03 SEOUL 08818 150426Z

GOVERNMENT THAN TO RELATIVE QUALITY/PRICE OF PRODUCT. ROK AGENTS HAVE CANDIDLY STATED THAT THEIR REACTION TO REGULATIONS SUCH AS THOSE PROPOSED WOULD BE TO SEEK NEW RELATIONSHIPS WITH SUPPLIER FIRMS WHOSE GOVERNMENTS WOULD NOT BE REQUIRED BY LAW TO PUBLICIZE AGENTS AND FEES.

5. BY UNILATERAL IMPOSITION U.S. "POLITICAL ETHICS" UPON INTERNATIONAL MARKETPLACE WE WOULD FORCE ROKG AND MANY OTHER GOVERN-

MENTS TO ADDRESS DIFFICULT AND POTENTIALLY EMBARRASSING MATTERS, WHICH THEY OTHERWISE WOULD PREFER TO IGNORE, OR AT LEAST TO HANDLE IN THEIR OWN WAY. PROPOSED PROCEDURES WOULD COMPEL PURCHASING GOVERNMENTS TO FACE SUBJECT OF COMMISSION FEES IN SUCH A MANNER, INCLUDING TAXATION, THAT LONG-ACCEPTED BUSINESS PRACTICES WOULD BE UPSET. IN SHORT, REGULATIONS AS SUGGESTED WOULD PROBABLY DRIVE AGENT-GOVERNMENT SALES PARTNERSHIP AWAY FROM U.S. SUPPLIERS.

6. IT APPEARS THAT A COMPROMISE APPROACH ALONG THE LINES SUGGESTED IN PARA 3 WOULD LARGELY ACHIEVE CONGRESSIONAL AIMS, WITHOUT PLACING UNDUE BURDENS UPON U.S. FIRMS, THUS PLACING THEM AT DISTINCT COMPETITIVE DISADVANTAGE INTERNATIONALLY.  
ERICSON

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## Message Attributes

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